IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 155 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHAYA GRAHAK SAHKARI BHANDAR LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR SK PATEL for Petitioner(s) : 1,
Ms. Phalguni Patel, Asst. GOVERNMENT PLEADER for Respondent(s) : 1 - 3, 5,
MR KM PATEL for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 05/12/2007
ORAL JUDGMENT

The facts, giving rise to this petition are as follows;

The petitioner deals with essential commodities and general commodities in its fairprice shops. The petitioner society, for the said purpose, has been issued two licenses, i.e., Licence No. 166 for essential commodities which is issued by Civil Supplies Department and General Licence No. 215. It is stated by the petitioner that it has two different branches/shops and it was on account of certain breach alleged to have been committed by one of the two branches of the petitioner society that the respondents threatened to discontinue the regular supply of essential commodities to its another branch against which there were no allegations and/or dues.

2. It was in the said background that the petitioner approached this Court under Article 226 of the Constitution of India challenging the action of the respondents of not supplying and/or discontinuing the regular quota of essential commodities to one of its branches.

2.1. This Court [Coram: Hon'ble Mr. Justice Rajesh Balia, as His Lordship then was] passed order dated 25.1.1996 admitting the petition and also

granted interim relief. Mr. SK Patel, Advocate appears for petitioner and Mr. KM Patel, Advocate appears for respondent No.5, while respondents No. 1, 3 and 5 are represented by Ms. Phalguni Patel, AGP.

2.2. Mr. SK Patel, Advocate for the petitioner submitted that the action of the respondents of taking action against the petitioner society's one branch on account of alleged breach by its another branch is unjustified. Mr. SK Patel, Advocate further submitted that discontinuation of the regular supply of essential commodities to its branch holding Licence No. 166 is unjustified and harsh as well as illegal and for alleged breach by another branch holding Licence No. 215, action against the branch holding Licence No. 166 is unauthorised and untenable in law. Except the said submission, no other contention is raised on behalf of the petitioner.

2.3. Mr. KM Patel, Advocate appearing for respondents No. 2 and 4 contended that the authorisation/licence issued in favour of the petitioner is a contract and that cancellation of authorisation or apprehended cancellation falls in

the realm of contract and a petition pertaining to matter arising from contract is not maintainable. In support of the said submission, Mr. KM Patel, Advocate, relied upon the judgment in the case of ***Jamnadas Hiralal Mendha vs. State of Gujarat***, reported in **1989 (1) GLH Page 459**.

3. On perusal of the notice dated 28.9.1995 issued by the respondents, which has provided the cause of action to the petitioner for preferring present petition, it transpires that according to the respondents the petitioner society has already discontinued its activities/operations of the branch against which the said notice was issued by the respondents. As per the said notice, the respondents demanded an amount of Rs. 3,41,469.64 as dues from the petitioner society. Earlier the petitioner was asked to show cause as to why its licence for levy sugar should not be cancelled and it was also afforded opportunity of hearing.

4. After receipt of the notice dated 28.9.1995, the petitioner approached this Court by preferring present petition.

4.1. It is pertinent to note that in present petition, the petitioner has not challenged the said notice dated 28.9.1995. Thus, the demand made by the respondents against the petitioner society is not in challenge in present petition. The petitioner has confined present petition only for the relief that the respondents may not discontinue or stop the regular quota of essential commodities to the petitioner society.

5. In the said judgment of this Court [Coram: Hon'ble Mr. Justice, A.P. Ravani, as His Lordship then was] held that the relationship between the parties is in the realm of pure and simple contract. Remedy for the fairprice shop owner would be, at the most, by way of claiming damages if at all they are in position to show that the defendant committed breach of the contract. In present case, the petitioner has not challenged the demand raised by the respondents No.2 and 4 against its branch holding Licence No. 215. The petitioner has prayed for a relief to the effect that the supply of regular quota of essential commodities to the society may not be

stopped, which, in effect, means that the petitioner claims an injunction against apprehended breach of contract. A petition praying for an injunction against apprehended breach of contract would not be maintainable and cannot be entertained.

6. It is also required to be noted that in advancing the contention that for alleged breach of its branch holding Licence No. 215 the concerned authorities cannot take action against another branch which holds Licence No. 166, the petitioner overlooks the fact that the petitioner society is legal entity and merely because it has separate branches, it does not mean that the respondents are enforcing their demand against a stranger or third party. Both the branches are part of petitioner society. The petitioner's contention is misconceived and cannot be accepted. Even otherwise, the said contention cannot be entertained in this petition since the notice is not challenged by the petitioner. The said issue is not required to be examined further also because, as noted above, the petitioner has not disputed its liability in present petition.

7. It is pertinent to note that, while admitting the petition, this Court by an order dated 25.1.1996 granted interim relief in following terms;

> *"Rule returnable on 2.2.96. Meanwhile respondents shall not subject the petitioner to any restraints in respect of licence issued for Luhana Mahajan Vadi in respect of which no notice or proceedings have been initiated for the reason that there is allegation of breach of another licence in respect of licence No. 215. Direct service permitted."*

8. The petitioner has, during the interrugnum, enjoyed the said interim relief and almost 11 years have passed since the interim relief was granted. In the said notice dated 28.9.1995 the respondents have noted that the branch of the petitioner society has, despite the dues of about Rs. 3,41,469.64, discontinued its operations without making payment of the said dues. It appears that the concerned respondents have not initiated taken any action for recovery of the said amounts, probably in view of pendency of the petition.

9. Since the petitioner has, inter alia, prayed that the concerned respondents should not discontinue the regular quota of essential commodities to the petitioner society, the relief prayed for by the petitioner amounts to prayer for injunction against apprehended breach of contract. A petition for such a relief would not be maintainable. Further, since the petitioner has neither disputed nor challenged the demand by the concerned respondents and/or the notice dated 28.9.1995, the relief prayed for by the petitioner in Para 14(B) does not deserve to be entertained and granted. Otherwise also, it would not be justified to grant the relief as prayed for by the petitioner or to continue the interim relief because it would not be proper that on the basis of interim relief, and that too without getting the issue regarding payment-recovery resolved, the petitioner continue to enjoy the benefit of supply/quota of essential commodities.

10. In view of the aforesaid discussion, the petitioner is not entitled for the relief prayed for and the interim relief, which has remained in

operation until now, does not deserve to be continued.

11. The petition, therefore, is rejected. Interim relief granted by order dated 25.1.1996 is vacated. Rule is discharged. No order as to costs. Mr. SK Patel, Advocate requested that when the respondents initiate any action, the petitioner may be put to notice. The request appears to be reasonable. Mr. K.M. Patel, Advocate appearing for respondent has stated that the respondents shall take action after giving notice to the petitioner. It is, however, in the facts of present case, clarified that, if and when the concerned respondents initiate any action against the petitioner society with regard to its demand either by way of any proceedings for recovering the amounts or by taking action of discontinuing the supplies or in any other manner, the respondents shall do so after giving two weeks' notice to the petitioner. With the said clarification and direction, the petition is disposed of.

[K.M. Thaker, J.]

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